



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0139]

Entry-Level Driver Training: United Parcel Service, Inc. (UPS); Reconsideration of Denial of Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Application for exemption; request for comments

SUMMARY: FMCSA announces that United Parcel Service, Inc. (UPS) seeks reconsideration of the Agency's denial of its application for exemption from provisions in the Entry-Level Driver Training (ELDT) final rule requiring two years of experience for training instructors. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for two years. UPS also believes that a two-year experience requirement doesn't automatically equate to success as a commercial motor vehicle (CMV) driver trainer. UPS makes this reconsideration request to ensure that it can continue to exceed the current regulatory requirements and provide proper training of its drivers and improve highway and public safety. FMCSA requests public comment on the UPS application for reconsideration.

DATES: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2019-0139 using any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.

- Mail: Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: Deliver comments to Docket Operations, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone:

(202) 366-4225. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2019-0139), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2019-0139” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, “FMCSA-2019-0139” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

The Entry-Level Driver Training (ELDT) final rule was adopted pursuant to 49 U.S.C. 31305(c). The rule is based in part on consensus recommendations from the Agency's ELDT Advisory Committee, a negotiated rulemaking committee. The rule enhances the safety of CMV operations on our Nation's highways by establishing a minimum standard for ELDT and increasing the number of drivers who receive ELDT. The rule revises 49 CFR part 380, Special Training Requirements, to include, among other things, driver training instructor qualifications. Under 49 CFR 380.713 a driver training instructor must have two years' experience and have held a commercial driver's license (CDL) for two years, as set forth in the definitions of behind-the-wheel (BTW) instructor and theory instructor in 49 CFR 380.605.

On June 19, 2019, FMCSA published a UPS application for exemption from two provisions of the ELDT final rule and requested public comment [84 FR 28623]. UPS requested an exemption from (1) the requirement in 49 CFR 380.713 that a driver training instructor hold a Commercial Driver's License (CDL) and have two years' experience driving a commercial motor vehicle (CMV), as set forth in the definitions of "behind-the-wheel (BTW) instructor" and "theory instructor;" and (2) the requirement in 49 CFR 380.703(a)(7) to register each training location in order to obtain a unique Training Provider Registry (TPR) number applicable to that location.

The Agency received 112 comments, including 58 supporting the requested exemptions and 51 opposing them. Three other commenters had no position either for or against the application and provided no substantive comments.

On December 9, 2019, the Agency denied the UPS exemption request because the application did not provide an analysis of the safety impacts the requested exemptions may

cause, as required by 49 CFR 381.310(c)(4), and did not explain how the exemptions would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulations, as required by 49 CFR 381.310(c)(5).

IV. Request for Reconsideration of Agency Decision

On July 1, 2020, UPS requested that FMCSA reconsider its denial of the exemption from 49 CFR 380.713. UPS believes that its current process of preparing driver trainers exceeds any skill set gained merely by operating a tractor-trailer for two years. The company also believes that a two-year experience requirement doesn't automatically equate to success as a CMV driver trainer. UPS has provided the Agency with updated information since the original denial illustrating that many of their locations have experienced turnover issues with driver trainers. UPS stated that it has had to hire 100 candidates to attempt to net the 50 trainer positions necessary across the U.S. Of the 100 hired, UPS has been able to retain only 38 trainers for the reasons explained in the request for reconsideration. A copy of the UPS application is in the docket listed at the beginning of this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on UPS' request for reconsideration of its application for an exemption. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the "Addresses" section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket,

relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,
Associate Administrator for Policy.

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